

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HONORATO GONZALEZ-
GONZALEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C16-0945JLR

ORDER

Before the court is Petitioner Honorato Gonzalez-Gonzalez's petition to modify his sentence pursuant to *Johnson v. United States*, --- U.S. ---, 135 S. Ct. 2551 (2015). (Pet. (Dkt. # 1).) On June 28, 2007, Mr. Gonzalez-Gonzalez pleaded guilty to the charge of felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g) and 924(a)(2). *United States v. Gonzalez-Gonzalez*, No. CR07-0161JLR (W.D. Wash.), Dkt. # 17 (Plea Agreement). Mr. Gonzalez-Gonzalez agreed to a base offense level of 24 based in part on "two [prior] felony convictions of either a crime of violence or a controlled substances

1 offense.” *Id.* ¶ 9(a). Both prior offenses were controlled substances offenses. *See id.*,
2 Presentence Report ¶ 16 (characterizing the offenses as “drug distribution”).¹

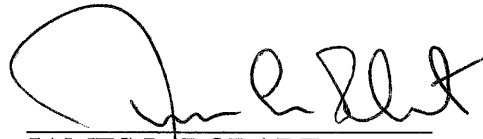
3 *Johnson* does not afford Mr. Gonzalez-Gonzalez an opportunity for relief. The
4 court enhanced his sentence based on multiple prior controlled substances offenses. *See*
5 *id.* The definition of a controlled substance offense in the United States Sentencing
6 Guidelines does not contain a residual clause like the one at issue in *Johnson*. *See*
7 U.S.S.G. § 4B1.2 (“The term ‘controlled substance offense’ means an offense under
8 federal or state law, punishable by imprisonment for a term exceeding one year, that
9 prohibits the manufacture, import, export, distribution, or dispensing of a controlled
10 substance (or a counterfeit substance) or the possession of a controlled substance (or a
11 counterfeit substance) with intent to manufacture, import, export, distribute, or
12 dispense.”); *Stanley v. United States*, 827 F.3d 562, 564 (7th Cir. 2016) (stating that
13 *Johnson* does not impact whether a prior drug conviction “counts” under the ACCA or
14 the Sentencing Guidelines). Mr. Gonzalez-Gonzalez’s sentence thus does not implicate
15 *Johnson*’s holding that the residual clause in the Sentencing Guidelines’ crime of
16 violence definition is unconstitutionally vague. *See Johnson*, 135 S. Ct. at 2556-57. In
17 addition, Mr. Gonzalez-Gonzalez failed to respond to the Government’s answer. (*See*
18 Dkt.; Sched. Order (Dkt. # 4) at 2 (setting deadline for Mr. Gonzalez-Gonzalez’s

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20 ¹ The presentence report from Case No. CR07-0161JLR is not in the record, so the court
21 takes judicial notice of the report and attaches a copy to this order. *See No Cost Conference, Inc.*
22 *v. Windstream Commc’ns, Inc.*, 940 F. Supp. 2d 1285, 1295 (S.D. Cal. 2013) (“Judicial notice is
particularly appropriate for the court’s own records in prior litigation related to the case before
it.”).

1 response brief).) For those reasons, the court DENIES Mr. Gonzalez-Gonzalez's petition
2 (Dkt. # 1).²

3 Mr. Gonzalez-Gonzalez has not "made a substantial showing of the denial of a
4 constitutional right," and accordingly the court denies him a certificate of appealability.
5 28 U.S.C. § 2253(c)(2).

6 Dated this 8th day of November, 2016.

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9 JAMES L. ROBART
United States District Judge

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21 _____
22 ² Because Mr. Gonzalez-Gonzalez's petition lacks substantive merit, the court declines to
consider the Government's argument that the motion was also procedurally barred. (Ans. (Dkt.
8) at 6.)